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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CADDO PARISH SCHOOL BOARD,

Appellant

V.

MARGARET SMITH BRYAN AND
ANADARKO PRODUCTION COMPANY

Appellees

ON APPEAL FROM THE JUDGMENT OF THE LOUISIANA SECOND CIRCUIT COURT OF APPEAL

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Did the Louisiana Second Circuit Court of Appeal err in retroactively applying the provisions of Act 278 of the 1958 Louisiana Legislature to a mineral reservation contained in a 1954 contract so as to abrogate the rights acquired by the Caddo Parish School Board under the contract?

2. Did the Louisiana Second Circuit Court of Appeal err in holding, under the facts of this case, that retrospective application of Act 278 of the 1958 Louisiana Legislature to a previously concluded contract between the parties did not constitute an unconstitutional impairment of obligations of contract and deprivation of property without due process of law?

3. Did the Louisiana Second Circuit Court of Appeal err in failing to find that Act 278 of the 1958 Louisiana Legislature, as retroactively applied to the Caddo Parish School Board in this case, was unconstitutional as containing an arbitrary, unreasonable and discriminatory classification in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	4
Statement of the Case	5
The Federal Questions are Substantial	10
Conclusion	14
APPENDIX	16

TABLE OF AUTHORITIES

CASES	Page
Abood v. Detroit Board of Education, 431 U.S. 209, 216 (1977)	4
American Motorists Insurance Company v. Starnes, 425 U.S. 637 (1976)	4
California Company v. Leiter Minerals, 381 U.S. 413, (1965)	10, 13
Cohen v. California, 403 U.S. 15 (1971)	4
Ford v. Williams, 189 La. 229, 179 So. 298 (1938)	6
Frost-Johnson Lumber Company v. Salling's Heirs, 150 La. 756, 91 So. 207, 243 (La. 1922)	6
Hodges v. Norton, 200 La. 614, 8 So. 2d 618 (1942)	6
Home Building and Loan Association v. Blaisdell, 290 U.S. 398 (1934)	11
Leiter Minerals, Inc. v. California Company, 241 La. 915, 132 So. 2d 845 (La. 1961)	10, 12, 13
Morey v. Dowd, 345 U.S. 457 (1957)	14
Southland Corp. v. Collector of Rev. for State of Louisiana, 321 So. 2d 501 (La. 1974)	14
State v. Petrovich, 396 So. 2d 1318 (La 1981)	14
United States v. Little Lake Misere Land Company, Inc., 412 U.S. 580 (1973)	10, 12
United States v. Nebo Oil Company, 190 F 2d 1003 (5th Cir. 1951)	10

TABLE OF AUTHORITIES (Continued)

	Page
United States Trust Company of New York v. State of New Jersey, 431 U.S. 1 (1977)	11
Whitney National Bank v. Little Creek Oil Company, 212 La. 949, 33 So. 2d 693 (1947)	10, 12
Zobel v. Williams, 457 U.S. 55 (1981)	14

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution Of The United States:	
Article I, Section 10, clause 1	2, 4, 7
Amendment XIV, Section 1	3, 4, 7
United States Judicial Code:	
28 U.S.C., Section 1257(2)	4
28 U.S.C., Section 2403(b)	4
Louisiana Revised Statutes:	
Title 9, Section 5806 A (repealed 1974) (now in Title 31, Section 149)	10
Title 9, Section 5806 B (repealed 1974) (now in Title 31, Section 149)	2, 4, 6, 8
Title 31, Section 74	6
Title 31, Section 149	2, 4, 8, 10
Acts Of The Louisiana Legislature:	
Act 278 of 1958 (enacting 9:5806 B)	4, 6, 8, 10 12, 15
Act 528 of 1960 (amending 9:5806 B)	8
Louisiana Civil Code:	
Article 3447	7
Article 3448	7
Louisiana Code Of Civil Procedure:	
Article 2166 D	4

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JURISDICTIONAL STATEMENT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The CADDO PARISH SCHOOL BOARD appeals from a judgment of the Louisiana Second Circuit Court of Appeal rendered August 22, 1984, and made final November 16, 1984, upon denial of writs of *certiorari* and review by a divided Louisiana Supreme Court.

OPINIONS BELOW

The opinion of the Louisiana Second Circuit Court of Appeal, of which reversal is here sought, (App., *infra*, pp. 6a - 12a) is reported as *Anadarko Production Company v. Caddo Parish School Board, et al*, 455 So. 2d 699 (La. App. 2d Cir. 1984). Also set out in the Appendix hereto are: (1) the opinion of the First Judicial District Court of Caddo Parish, Louisiana (App., *infra*, pp. 1a - 3a), which was reversed by the court of

appeal; (2) the order of the court of appeal denying rehearing (App., *infra*, p. 13a), and (3) the orders of the Louisiana Supreme Court denying writs of *certiorari* and review (App., *infra*, p. 14a), refusing reconsideration of writ denial (App., *infra* p. 15a), and staying execution of the judgment pending application to and final action by this Honorable Court (App., *infra*, p. 16a).

JURISDICTION

This appeal arises from a concursus proceeding to determine ownership of mineral rights and royalties attributable to production from land owned by appellant. This action brings in question the validity of former LSA-R.S. 9:5806 B (now incorporated in LSA-R.S. 31:149) as retrospectively applied to a mineral reservation contained in a conventional deed, predating adoption of the statute, by which appellant acquired ownership of the subject property. The reservation created a mineral servitude in favor of the vendor which could be extinguished by the prescription of ten years nonuse. The statute in question makes mineral rights reserved in acts of acquisition by certain state agencies and subdivisions imprescriptible but does not specify that it is to be retroactive.

Retrospective application of the statute was challenged on the ground that such application would constitute an impermissible impairment of rights and obligations under a contract by depriving appellant of its bargained-for contractual interests without furthering any legitimate state purpose in violation of Article I, §10, cl. 1 of the United States Constitution. Retrospective application was also challenged on the grounds that such application would result in a deprivation of valuable property rights (both under the contract and as owner of the land) without due process of law and subject appellant to a denial of equal protection of the law (through arbitrary classification excluding the State as an entity and by honoring

bargains made after the statute's enactment while destroying those made before) in violation of the Fourteenth Amendment to the United States Constitution. The federal constitutional issues were raised in the trial court and throughout the proceedings on appeal.

On December 6, 1983, the First Judicial District Court for Caddo Parish, Louisiana held for appellant by interpreting the statute as having prospective operation only. Consequently, the court did not specifically rule on the constitutional issues but classified the rights of the parties as bargained-for real and substantive rights which should not be retrospectively affected by legislation not clearly expressing such intent. On August 22, 1984, the Louisiana Second Circuit Court of Appeal reversed and held that the statute should be given retrospective application because of the "general rule" that laws modifying periods of liberative prescription are to be retrospectively applied where the period of time in force has not elapsed to make the "bar complete." It further upheld the validity of the statute as applied on the basis that retrospective application of the statute would not unconstitutionally impair the obligations of contract because, in its view, the mineral reservation created a servitude for an indefinite duration rather than a fixed period of time. Since the time had not completely run when the statute was enacted, the court of appeal held that appellant had no "vested" rights which were entitled to either state or federal constitutional protection. A timely filed application for rehearing, filed by appellant, was denied by Louisiana Second Circuit Court of Appeal on September 21, 1984.

On October 20, 1984, appellant timely filed a petition for writs of review and *certiorari* with the Louisiana Supreme Court which was denied by it on November 16, 1984, although two Justices voted to grant the writ. Finally, on November 30, 1984, appellant filed with the Louisiana Supreme Court a motion for reconsideration of the writ denial and alternate motion to stay execution of the judgment pending

appeal or application for *certiorari* to the Supreme Court of the United States. The motion to stay execution of judgment was granted December 4, 1984, but the motion for reconsideration of the writ denial was refused on December 7, 1984, on the ground that the judgment of the Louisiana Second Circuit Court of Appeal became final upon the writ denial November 16, 1984, under LSA-C.C.P. Art. 2166 D. Notice of appeal to this Court was timely filed on February 4, 1985 (App., *infra*, p. 17a).

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment on appeal: *Abood v. Detroit Board of Education*, 431 U.S. 209, 216 (1977); *American Motorists Insurance Company v. Starnes*, 425 U.S. 637 (1976); *Cohen v. California*, 403 U.S. 15 (1971).

28 U.S.C. §2403(b) may be applicable and the Attorney General for the State of Louisiana has been served with the notice of appeal and will be served with this jurisdictional statement.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution; Article 1, Section 10, clause 1 of the United States Constitution; and the former Louisiana Revised Statute 9:5806 B which was repealed effective January 1, 1975. Thereafter, the provisions of the statute as modified and amended appeared in Louisiana Revised Statute 31:149. The original statute in question was enacted by Act 278 of the 1958 Louisiana Legislature and provided in pertinent part:

> "When land is acquired by conventional deed or contract ... by a ... school board ... from any person,

> firm, or corporation, and by the act of acquisition ... oil, gas or other mineral or royalties are reserved, the rights so reserved shall be imprescriptible and shall remain vested in the person ... from whom the land was acquired ..."

The above provisions are set out in full in the Appendix to this jurisdictional statement, *infra*, pp. 20a to 24a.

STATEMENT OF THE CASE

On July 30, 1954, appellant, Caddo Parish School Board, ("School Board") purchased 80 acres of land from appellee, Ms. Bryan, by warranty deed. The deed contained a mineral reservation in favor of the vendor.[1] The reservation created a mineral servitude which could be extinguished by nonuse for ten years. It is undisputed that the ten year prescription of nonuse commenced to run on July 30, 1954, the date upon which the reservation was made. It is also undisputed that there was no use made of the mineral servitude by Ms. Bryan for a period greatly in excess of ten years thereafter. Consequently, in the absence of such activity, the mineral servitude would have been extinguished on July 29, 1964, and the School Board, as owner of the land freed of the servitude, would be owner of the mineral rights as well.

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[1]The deed conveyed the East half of the Southeast quarter of Section 9, Township 16 North, Range 15 West, in Caddo Parish, and contained this reservation:

> "The vendor herein reserves all right, title and interest in and to all minerals in, on or under the above described property less and except the right of egress and ingress for drilling any oil and/or gas operations, said vendor, however, reserving directional drilling and unitizing privileges."

In November of 1978, twenty-four years after the conveyance, Anadarko Production Company ("Anadarko") acquired a mineral lease from the School Board, created a production and drilling unit which included the subject tract, and drilled a gas well. In June of 1981, Anadarko also acquired a mineral lease on the same land from Ms. Bryan. Shortly after production began, Anadarko provoked this concursus proceeding, deposited the royalty payments in the registry of the court, and joined the School Board and Ms. Bryan as adverse claimants. The concursus was provoked on the basis of Ms. Bryan's contention that the provisions of Act 278, of the 1958 Louisiana Legislature (LSA-R.S. 9:5806 B) made mineral reservations in acts of acquisition by certain state agencies and political subdivisions imprescriptible. Ms. Bryan further contended that the statute should be given retrospective application so as to affect and make imprescriptible the mineral servitude created in the 1954 conveyance to the School Board.[2]

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[2]Under Louisiana law, oil and gas are not subject to absolute ownership separate and apart from the soil of which they form a part. *Frost-Johnson Lumber Company v. Salling's Heirs*, 150 La. 756, 91 So. 207, 243 (La. 1922). The sale or reservation of mineral rights by the landowner creates a mineral servitude which is subject to extinguishment by ten years nonuse. The servitude consists of the right to use the the property upon which it is granted to explore for, produce and reduce to possession the minerals found. A mineral servitude is a real right which is alienable and heritable, *Ford v. Williams*, 189 La. 229, 179 So. 298 (1938); it may be and often is owned in indivision. A mineral servitude is subject to the laws of registry and is valid against third persons when recorded. Parties are prohibited from creating a mineral servitude having a prescriptive period greater than ten years. *Hodges v. Norton*, 200 La. 614, 8 So. 2d 618 (1942). This principle of law is as valid today as it was in 1954 when the transaction involved in this case took place. *See*, LSA-R.S. 31:74. If the period of ten years passes without use, the servitude is extinguished, the property is relieved of its encumbrance, and the owner of the land owns the mineral rights as well.

In the trial court, after answer, cross motions for summary judgment were filed, briefed and argued by the School Board and Ms. Bryan. In opposition to Ms. Bryan's motion for summary judgment, in its answer, and in support of its own motion for summary judgment, the School Board contended that an examination of the statute would reveal that it was not intended to be and was not applicable to the prior transaction of the parties and should be given prospective operation only. It also contended that retrospective application of the statute would render it unconstitutional by denying equal protection of the law to the School Board and by depriving it of valuable property and property rights without due process of law in violation of the Fourteenth Amendment to the United States Constitution. The School Board also alleged that retrospective application would result in an impermissible impairment of obligations and rights under its existing contract in violation of Article I, §10, cl. 1 of the United States Constitution by totally destroying the real and substantive rights it acquired by virtue of the contract.[3] In the trial court, appellant raised in its pleadings the denial of equal protection in general terms of a Fourteenth Amendment violation. In oral argument, and before submission of the case to the trial court, appellant specifically contended that the statute, if applied to the previous transaction, would be unconstitutional since it contained an arbitrary and

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[3]Appellant's position is that the mineral reservation in the deed implicitly incorporated into the contract the then existing (and still existing) ten year prescription of nonuse specifically applicable to servitudes. The ten year nonuse prescription is a mode of extinguishment of a real right. *See*, LSA-C.C. Art. 3448. It is a substantive provision, unlike the simple liberative prescription which is a mode of barring actions as a result of inaction for a period of time. *See*, LSA-C.C. Art. 3447.

unreasonable classification discriminatory toward appellant[4] and would further deprive appellant of equal protection on the basis that the permissive nature of the statute would allow bargains and contracts made after its enactment to be honored but would destroy contracts and bargains (particularly the one in question) made prior thereto.

On December 6, 1983, the trial court granted appellant's motion for summary judgment, interpreted the statute to have prospective operation only, and held that the mineral servitude in question had prescribed for nonuse. While the court did not specifically rule on the constitutional issues, it classified the rights of the parties as bargained-for, real and substantive rights which should not be retrospectively affected by legislation not clearly expressing such intent. In this connection, the court stated as follows:

> "It is the opinion of the court that when mineral rights are created by contract, the owner of the rights expects to have ten years within which to exercise his rights, because ten years is what he bargained for. The length of time within which the right may be exercised is regarded as important as the right itself. The owner would not expect the legislature to later shorten or lengthen his ten year period and not by an

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[4]LSA-R.S. 9:5806 B, as originally enacted in 1958, applied only to certain specified state agencies. Its scope was broadened in 1960 by Act 528 to include "any political subdivision authorized to incur debt and issue bonds ..." The State in its sovereign capacity was not covered by the statute until adoption of the Mineral Code in 1975, when the language "the State of Louisiana or any subdivision or agency" was added. See LSA-R.S. 31:149. Consequently, retroactive application would not reach acquisitions by the State in its sovereign capacity before 1964. Appellant contended that there was no rational basis for excluding the State from scope of the statute and such application could not advance any legitimate State interest.

> act that does not clearly state that it is to have retrospective application. Conversely, the landowner expects the land to be freed of the servitude if the rights are not timely exercised. The court is aware that as a general proposition, changes in laws of prescription are retrospective in their operation; but the peculiar and particular treatment and classification of mineral rights in the State of Louisiana as servitudes as above stated strongly weighs against application of the above general rule." (App. *Infra*, p. 3a).

Ms. Bryan appealed to the Louisiana Court of Appeal for the Second Circuit, where the School Board again specifically raised the constitutional in the brief and argument. On August 22, 1984, the Louisiana Second Circuit Court of Appeal reversed the judgment of the trial court and held that the statute should be given retrospective application because of the general rule that laws modifying periods of liberative prescription are to be retrospectively applied where the period of time in force has not elapsed to make the bar complete. It further held that retrospective application of the act in question did not unconstitutionally impair the obligations of the contract because, in its view, the reservation in question created a servitude for an indefinite duration rather than a fixed period of time. It made this finding without determining that there was any legitimate state interest to be furthered by retrospective application of the statute. Further, the Court did not discuss the equal protection issue at all.

Appellant reurged all constitutional issues in its timely filed application for rehearing with the Court of Appeal, and in its petition for writs of *certiorari* and review presented to the Louisiana Supreme Court, both of which were denied without comment except that two Justices of the Louisiana Supreme Court felt the granting of a writ of review was warranted.

The Louisiana Second Circuit Court of Appeal relied, in its

decision, upon *dicta* expressed in two Louisiana cases involving the alleged retrospective application of a similar statute (Act 315 of 1940) which became LSA-R.S. 9:5806 A. (*Repealed*; but now incorporated in LSA-R.S. 31:149). That statute made mineral servitudes created by reservations in sales of land to the United States imprescriptible. *See*, *Whitney National Bank of New Orleans v. Little Creek Oil Company*, 212 La. 949, 33 So. 2d 693 (1947); *Leiter Minerals, Inc. v. California Company*, 241 La. 915, 132 So. 2d 845 (La. 1961). The Court of Appeal also relied upon a federal appellate case, *United States v. Nebo Oil Company*, 190 F 2d 1003 (5th Cir. 1951), the application of which has been disapproved by this Court. *See*, *California Company v. Leiter Minerals*, 381 U.S. 413 (1965). Each of these cases was considered and discussed in this Court's opinion in *United States v. Little Lake Misere Land Company, Inc.*, 412 U.S. 580 (1973), where retrospective application of the imprescriptibility provisions of Act 315 of 1940 against the United States was plainly rejected with this Court noting that the statute would deprive the Government of its bargained-for contractual interests by confiscating such interests through special legislation. The Louisiaina Second Circuit Court of Appeal expressed the view that *Little Lake Misere* was not applicable to this case and did not have the effect of overriding *Whitney*, *Nebo* and *Leiter* because of its application of federal law rather than state law, and it rejected the contention of appellant that the reliability and authority of those cases had been seriously impaired by that decision.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The *prospective* application of Act 278 of 1958 is not being questioned here. Application of the statute to transactions completed and bargains made before its enactment presents substantial federal questions. Retrospective application under the facts of this case will result *not* in a simple after-the-fact modification or a slightly serious impairment, but in total destruction of the bargained-for contractual interests appellant

acquired in the 1954 contract. Its land will be subjected to a perpetual servitude and encumbrance and, for all practical purposes, there will be created in appellee ownership of a mineral estate separate and apart from the land. No such result could reasonably have been envisioned by the parties to the contract at the time it was consummated.

In the transaction between the School Board and Ms. Bryan the mineral reservation contained in the deed implicitly incorporated into the contract the then existing (and still existing) ten year prescription of nonuse applicable to mineral servitudes. In fact, the parties to the contract were prohibited from establishing a servitude which would survive a period longer than ten years without use. It was also implictly agreed that the servitude would be extinguished and appellant's land freed of the encumbrance should ten years pass without use. The rights created were substantial real rights in immovable property and minerals. While the legislature may sometimes modify contractual rights, and while not every modification will impermissibly impair obligations, legislation effecting such a change must be addressed to a legitimate and important state purpose and the measures taken by the legislature must be reasonable and appropriate to the achievement of that purpose. *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1934). This Court has held that the laws in existence at the time and place of the making of a contract enter into and form a part of it. This principle presumes that parties adopt the terms of their bargain in reliance on the law in effect at the time their agreement is reached. The expectations of the parties regarding their ability to enforce the agreement are entitled to constitutional protection absent an important and legitimate state interest and need. *United States Trust Company of New York v. State of New Jersey*, 431 U.S. 1 (1977).

There is simply no legitimate and important state purpose to justify a retrospective application of the statute so as to completely destroy the real and substantive rights of appellant.

The rationale employed in *U.S. v. Little Lake Misere Land Company*, 412 U.S. 580 (1973) is plainly applicable to this case. The court there set forth the proposition that bargained-for contractual interests cannot be confiscated, particularly by retrospective application of a special statute which does not reasonably accomplish a legitimate state purpose. The legislature "cannot facilitate transactions already consummated." 412 U.S. 580, 599. In discussing the purpose of the Louisiana Legislature in adopting Act 315 of 1940, this Court had occasion to note that the enactment of Act 278 of 1958 might be a "belated effort at statutory parity" which may not be accorded retrospective application since, even without such legislation affecting mineral interests tied to local governmental land purchases, Louisiana could apply its own conservation laws and severance tax to any property within the state in which the state or its local governmental subdivisions holds an interest, whether the interest be present or contingent. 412 U.S. 580, 601, 602. While this statement was made in comparing the possible effect on state and local governmental entities arising from Act 278 of 1958, with the possible effect on the United States under Act 315 of 1940, it clearly supports the lack of a legitimate, compelling and overriding state interest in the retrospective application of the statute in question. Further, in a concurring opinion, Mr. Justice Stewart noted that the retrospective abrogation of a bargained-for contingent future interest in acquiring full ownership in property constitutes a "textbook example" of an impermissible impairment of the obligations of a contract. 412 U.S. 580, 606.

The two Louisiana cases cited by the Louisiana Second Circuit Court of Appeal constitute pure *dicta*. In *Whitney National Bank of New Orleans v. Little Creek Oil Company*, 212 La. 949, 33 So. 2d 693 (La. 1947), the Louisiana Supreme Court actually made no decision on the merits and ordered the case dismissed for nonjoinder of the United States as a necessary party. In *Leiter Minerals, Inc. v. California Company*, 241 La. 915, 132 So. 2d 845 (La. 1961), the Court determined that the suit

before it was not a proper one to decide or render a declaratory judgment in and it reluctantly issued an advisory opinion at the request of the federal court. The statements contained in that decision also constitute mere *dicta*. Additionally, the United States Supreme Court in *California Company v. Leiter Minerals, et al*, 381 U.S. 413 (1965), which was the federal aspect of the *Leiter Minerals* case, granted *certiorari*, vacated the judgment of the court of appeal and remanded the case to the district court with instructions to dismiss the complaint as "'moot" even though the United States Supreme Court knew the parties had settled the case.

The Louisiana Second Circuit Court of Appeal seriously erred in its mechanical application of a so-called general rule allowing destruction of the bargained-for contractual rights of the parties. That court failed to properly consider and distinguish the real and substantive rights of the parties being affected by its decision from other types of rights which may be classified as merely procedural or remedial. It gave no recognition to the fact that in the creation of mineral servitudes, whether by reservation or otherwise, there are serious and valuable bargained-for contractual rights and obligations which spring therefrom. It failed to recognize the real distinction between the prescription of nonuse applicable to mineral servitudes as a mode of extinguishment and the liberative prescription which merely operates as a bar to an action on a simple debt. The Louisiana Second Circuit Court of Appeal failed to see or consider the anomoly its decision creates by allowing persons and entities selling and purchasing land after the passage of the act to enjoy the freedom of contract with respect to mineral interests while at the same time destroying the bargains, exchanges, obligations and rights of the parties made and undertaken prior thereto. It also failed to comply with the decisions of the United States Supreme Court by not determining whether any legitimate state interest would be furthered by retrospective application of the statute.

Finally, the Louisiana Second Circuit Court of Appeal decision failed to consider the denial of equal protection accorded to appellant by the unreasonable, irrational and arbitrary classification and application of the special statute. Exclusion of the State from the scope of the legislation has no rational basis. It does not create a reasonable classification or one rationally related to any legitimate state objective. The discriminatory aspect of the statute can be seen even more clearly in the light of a retrospective application of the statute. The State simply cannot facilitate transactions already consummated and no legitimate state purpose can be accomplished by such retrospective application. *Zobel v. Williams*, 457 U.S. 55 (1981); *Morey v. Dowd*, 345 U.S. 457 (1957); *Southland Corp. v. Collector of Rev. for Louisiana*, 321 So. 2d 501 (La. 1974); *State v. Petrovich*, 396 So. 2d 1318 (La. 1981). There are substantial federal constitutional questions here presented which involve the impairment of obligations of contract, deprivation of property and property rights without due process of law and denial of equal protection of the laws.

CONCLUSION

If the decision of the Louisiana Second Circuit Court of Appeal in this case is allowed to stand, its practical effect will be to completely and utterly destroy the valuable bargained-for contractual rights and interests acquired by the School Board through the deed and transaction by which it acquired ownership of the subject property. To be more specific, it will result in a confiscation of those rights and interests by creating in appellee the ownership of a mineral estate separate and apart from the land and by subjecting the land of the School Board to a perpetual servitude and encumbrance in violation of its contractual rights and other rights as owner of the land. Finally, the decision clearly opens the door and will invite many claims and challenges to the rights of school boards in this state to receive or continue to receive revenues attributable to production

of oil and gas from school lands acquired by them many years prior to 1958 at a time when no such result could reasonably have been anticipated by anyone.

The decision of the Louisiana Second Circuit Court of Appeal upholding the constitutionality of Act 278 of 1958 as retrospectively applied impermissibly destroys the contractual and property rights of appellant, deprives it of those property rights without due process of law and fails to accord appellant equal protection of the laws. Such application of the state statute violates the Constitution of the United States. That decision should be overruled or remanded for further consideration of the constitutional issues in accordance with the guidelines set forth in this court's prior decisions. The issues involved herein are important and justify plenary review, briefing and oral argument.

Respectfully submitted,

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APPENDIX — GENERAL FORM

INDEX

	Page
A. Opinion of the First Judicial District Court, Caddo Parish, Louisiana, dated December 6, 1983	1a
B. Judgment of the First Judicial District Court, Caddo Parish, Louisiana, dated December 20, 1983	4a
C. Opinion of the Court of Appeal, Second Circuit, State of Louisiana, dated August 22, 1984.....	6a
D. Denial of rehearing of the Court of Appeal, Second Circuit, State of Louisiana, dated September 21, 1984	13a
E. Denial of application for writs of certiorari and review by the Supreme Court of the State of Louisiana, dated November 16, 1984	14a
F. Denial of application for reconsideration of denied writ by the Supreme Court of the State of Louisiana, dated December 7, 1984	15a
G. Orders of the Supreme Court of the State of Louisiana, dated December 4, 1984, staying execution of judgment pending timely application to the United States Supreme Court	16a
H. Appellant's Notice of Appeal to the United States Supreme Court filed in the Supreme Court of the State of Louisiana the Louisiana Second Circuit Court of Appeal and the First Judicial District Court, Caddo Parish, Louisiana, on February 4, 1985	17a

APPENDIX — GENERAL FORM (Continued)

INDEX

Page

I. Constitution of the United States, Article I, Section 10 ..... 20a

J. Constitution of the United States, Amendment XIV . 20a

K. Louisiana Revised Statutes, Title 31, §149 ..... 21a

L. Act 278 of the 1958 Louisiana Legislature 22a

M. Act 528 of the 1960 Louisiana Legislature 24a

ANADARKO PRODUCTION COMPANY	:	NO. 294,507
VERSUS	:	FIRST JUDICIAL DISTRICT COURT
CADDO PARISH SCHOOL BOARD, ET AL	:	CADDO PARISH, LOUISIANA

OPINION

This concursus proceeding was instituted by plaintiff, Anadarko Production Company, to determine the ownership of mineral rights and royalties attributable to production from the east half of the southeast quarter of Section 9, Township 16 North, Range 15 West, Caddo Parish, Louisiana. Joined as alleged adverse claimants are the Caddo Parish School Board and Mrs. Margaret Smith Bryan from whom plaintiff acquired separate oil, gas and mineral leases on November 13, 1978 and June 29, 1981, respectively.

On July 30, 1954, the Caddo Parish School Board purchased the property from Mrs. Bryan by warranty deed. The deed contained a mineral reservation in favor of Mrs. Bryan and it is undisputed that the ten year prescription of nonuse provided in Louisiana Civil Code Articles 789 and 3546 commenced to run on July 30, 1954. There was no drilling, exploration or production on the subject property sufficient to interrupt the running of prescription for a period in excess of ten years thereafter.

On November 13, 1978, the School Board granted an oil, gas and mineral lease unto plaintiff, Anadarko Production Company. On January 29, 1980, a drilling and production unit was created which included the subject tract and a well was drilled off the subject tract, but within the unit, which began production on July 6, 1982. Mrs. Bryan also executed a

lease to plaintiff and had made demands for the payment of royalties thereunder. This lawsuit was then commenced by Anadarko.

Mrs. Bryan has filed a Motion for Summary Judgment in which she contends that Act 278 of 1958, which was enacted subsequent to the transaction between the parties, should be given retrospective application so as to make the mineral rights imprescriptible. The School Board contends just as strongly that Act 278 of 1958 should be given prospective application only and has filed a motion for summary judgment on its behalf.

Mineral rights in the State of Louisiana are regarded as servitudes which can be extinguished by the liberative prescription of ten years. Mineral rights, which convey the right to go upon the land to search for and reduce the minerals found to possession, are real rights to which the land is subject. If timely exercised, the liberative prescription will be interrupted and the rights will continue. If not timely exercised, the rights are lost and the land is freed of the servitude.

It is the opinion of the court that when mineral rights are created by contract, the owner of the right expects to have ten years within which to exercise his rights, because ten years is what he bargained for. The length of time within which the right may be exercised is regarded as important as the right itself. The owner would not expect the legislature to later shorten or lengthen his ten year period and not by an act that does not clearly state that it is to have retrospective application. Conversely, the landowner expects the land to be freed of the servitude if the rights are not timely exercised. The court is aware that as a general proposition, changes in laws of prescription are retrospective in their operation; but the peculiar and particular treatment and classification of mineral rights in the State of Louisiana as servitudes as above stated strongly weighs against application of the above general rule.

For the above reasons, it is the further opinion of this court that Act 278 of 1958 should not be interpreted to give retrospective application, because the act does not clearly state that it is to be so applied.

The Motion for Summary Judgment filed by Mrs. Bryan is denied. The Motion for Summary Judgment filed by the Caddo Parish School Board is granted.

December 6, 1983

C.J. Bolin, Jr.
District Judge

ANADARKO PRODUCTION COMPANY	:	NO. 294,507
VERSUS	:	FIRST JUDICIAL DISTRICT COURT
CADDO PARISH SCHOOL BOARD, ET AL	:	CADDO PARISH, LOUISIANA

JUDGMENT

This matter having been duly heard and submitted to the Court upon cross motions for summary judgment filed by Margaret Smith Bryan and the Caddo Parish School Board; there being no genuine issue of material fact; the Court considering the law and evidence to be in favor of the Caddo Parish School Board; and for the reasons more fully set forth in the written Opinion of this Court dated December 6, 1983:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the Caddo Parish School Board and against Margaret Smith Bryan and Anadarko Production Company as follows:

(A) Denying the motion for summary judgment of Margaret Smith Bryan and granting the motion for summary judgment of the Caddo Parish School Board;

(B) Recognizing the Caddo Parish School Board as owner of the Southeast Quarter (E/2 of SE/4) of Section 9, Township 16 North, Range 15 West, Caddo Parish, Louisiana, containing 80 acres, more or less, free and unencumbered by any mineral servitude or other mineral right in favor of Margaret Smith Bryan; and

(C) Recognizing and declaring the Caddo Parish School Board to be the owner of and entitled to all sums deposited in

the Registry of this Court to the extent that said sums are attributable to the 22% lessor's royalty interest under the lease between the Caddo Parish School Board and Anadarko Production Company, recorded under Registry No. 778623 of the Conveyance Records of Caddo Parish, Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court disburse and pay to the Caddo Parish School Board all sums on deposit in the Registry of this Court in this matter, to the extent that said sums are attributable to the 22% lessor's royalty interest under the Caddo Parish School Board lease with Anadarko Production Company, and any interest attributable thereto, in accordance with this judgment and that the excess of said sums on deposit in the Registry of this Court, including any interest attributable thereto, be disbursed and returned to plaintiff, Anadarko Production Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Margaret Smith Bryan pay all costs of these proceedings.

Shreveport, Louisiana, this 20th day of December, 1983.

C.J. BOLIN, JR., District Judge

NO. 16,332-C.A.

Court of Appeal
Second Circuit
State of Louisiana

ANADARKO PRODUCTION COMPANY Plaintiff-Appellee

VERSUS

CADDO PARISH SCHOOL BOARD, ET AL Defendant-Appellant

Before PRICE, MARVIN, AND NORRIS, JJ.

MARVIN, J.

Former LRS 9:5806 B, now incorporated into LRS 31:149, was enacted by Act 278 of 1958 to make imprescriptible mineral servitudes that were created when landowners reserved mineral rights in a sale of land to school boards and other named agencies of the state.[1]

In this appeal arising out of a concursus proceeding, we reverse the trial court's judgment to the contrary and hold that the 1958 statute is to be applied retroactively to a mineral servitude created in 1954 when a landowner, Mrs. Margaret Smith Bryan, sold 80 acres to the Caddo Parish School Board for a cash consideration and reserved all of the oil, gas and mineral rights.[2]

After acquiring a mineral lease from the school board in 1978 and from Mrs. Bryan in 1981, the plaintiff in the concursus proceeding, Anadarko, drilled and began producing minerals in 1982 from a unit which included the 80 acres. This concursus action was then provoked between the two lessors. Mrs. Bryan appeals the trial court judgment.

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[1]See LSA-R.S. 31:149 and Comment following. Act 278 of 1958 provided in pertinent part that:

> When land is acquired by conventional deed or contract ... by a ... school board ... from any person, firm or corporation, and by the act of acquisition ... oil, gas or other mineral or royalties are reserved, the rights so reserved shall be imprescriptible and shall remain vested in the person ... from whom the land was acquired.

[2]The deed from Mrs. Bryan, dated July 30, 1954, conveyed the East half of the Southeast quarter of Section 9, Township 16 North, Range 15 West, in Caddo Parish, and contained this reservation:

> The vendor herein reserves all right, title and interest in and to all minerals in, on or under the above described property less and except the right of egress and ingress for drilling any oil and/or gas operations, said vendor, however, reserving directional drill and unitizing privileges.

TRIAL COURT'S RATIONALE

The trial court reasoned that when a mineral servitude is created by a reservation in the sale of land, the servitude owner-vendor bargains for and "expects" to have ten years within which to exercise his rights and the land-owner-vendee "expects" the land to be freed of the servitude if the servitude rights are not timely exercised. This is a correct paraphrase of the law relating to the ten years nonuse liberative prescription. See LRS 31:16, 27-61; *Frost-Johnson Lumber Company v. Nabors Oil & Gas Company*, 149 La. 100, 88 So. 723 (1921); CC Arts. 789, 3546.

The trial court also correctly recognized the general rule that laws of liberative prescription are retrospectively applied. More fully stated, this principle derives from cases which hold that such laws are mere expressions of the legislature's view of sound public policy, and that the "shelter" provided by such laws is subject to legislative change and does not create a "fundamental" right in an individual. *Chase Securities Corporation v. Donaldson*, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945); *United States v. Nebo Oil Company*, 190 F.2d 1003, 1009-1010, (5th Cir. 1951). Statutes which either shorten or extend the period of prescription have been held subject to the legislative power as long as the period of time provided by the statute has not elapsed to make the prescriptive "bar" complete. *Campbell v. Holt*, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885). The right to the effect of the prescription is not considered as "vested" until the period is completed, and before the period is completed, that right may be affected or destroyed by legislative enactment suspending or interrupting the period. *Calvit v. Mulhollan*, 12 Rob. 266 (La. 1845).

The trial court did not retrospectively apply the 1958 statute because it concluded that the Louisiana Legislature could not have been "expected" to modify the ten year nonuse period without clearly stating that the change in the law was to be

applicable to periods of time then running. We must respectfully disagree. An expectancy founded upon the premise that an applicable law of liberative prescription will not be legislatively modified is not regarded as a "vested" or fundamental right that is entitled to constitutional protection. *Nebo Oil Company*, 190 F. 2d at p. 1009; *Shreveport Long Leaf Lumber Company v. Wilson*, 195 La. 814, 197 So. 566 (1940); *DeArmas v. DeArmas*, 3 La. Ann. 526 (1848); *State v. Alden Mills*, 202 La. 416, 12 So. 2d 204 (1943).

Nebo Oil Company involved the retroactive application of a similar imprescriptibility statute, Act 315 of 1940, which became LRS 9:5806 A. That law made imprescriptible servitudes created by mineral reservations in sales of land to the United States. See LRS 31:149-152. Other cases have also discussed the retroactivity of Act 315 of 1940, the language of which was followed, although not verbatim, in Act 278 of 1958. The arguments in those cases included the argument made here by the school board that retroactive application of the act would impair the obligations of the contract in violation of U.S. Const. Art. 1, Sec. 10, and would result in divestiture of vested rights.

The first case was *Whitney National Bank of New Orleans v. Little Creek Oil Company*, 33 So.2d 693 (La. 1947). That case did not pass on the constitutionality of Act 315 of 1940 because the United States was not a party to the action. In dicta, the court stated that it believed the act to be applicable even though it did not expressly provide for retroactivity, because of the general rule that laws of liberative prescription are applied retroactively.

The constitutional issues were raised in *Nebo Oil Company*, supra, and in *Leiter Minerals, Inc. v. California Company*, 132 So. 2d 845 (La. 1961). *Nebo Oil Company*, arose out of the same factual situation as *Whitney*, supra. The United States purchased a tract of land from Bodcaw Lumber Company in 1936 to become a part of the Kisatchie National Forest. The

sale of the land was made "subject to" a prior sale of the mineral rights by Bodcaw to Good Pine Oil Company in 1932. The court found that no vested rights had been affected by retroactive application of Act 315 of 1940 because a landowner's expectation that a mineral servitude will lapse within the prescribed period is nothing more than a mere expectancy or hope that the applicable laws of prescription will continue without change. This expectation was held not to be a vested right protected by the constitution. The court further found that application of the act did not impair the obligations of the contract in violation of U.S. Const. Art. 1, Sec. 10. Although laws of evidence, such as statutes of limitations, may affect the validity, construction, duration, or discharge of contracts, these laws are not rgarded as necessarily affecting the obligation of contract. *United States v. Nebo Oil Company;* supra.

In *Leiter*, supra, the Louisiana Supreme Court construed Act 315 of 1940 at the request of the United States Supreme Court. The United States there argued that the mineral reservation in the deed created a servitude for a stated and certain time and that if the act were applied under those circumstances, it would unconstitutionally impair the obligation of the contract. The Louisiana Supreme Court declined to construe the reservation clause, but stated the possible application of the act under the conflicting interpretations of the clause. The court said that if the reservation was indeed one for a specific or certain time stated in the contract, then Act 315 of 1940 would not be applicable, and further found that if the Act were applicable, it would be unenforceable as an unconstitutional impairment of the obligation of contract. The court said that if the reservation clause, on the other hand, did not establish a servitude for a certain time, but rather established one of uncertain or indefinite duration, then the period of prescription would be fixed by law. Under the latter circumstances the court said that Act 315 of 1940 would be retroactively applicable and, as applied, would be constitutional.

In this case, the mineral reservation established a servitude of indefinite duration (the latter circumstance of *Leiter Minerals*, supra) and is governed by the general laws of prescription. The servitude which was established in 1954 would have prescribed by ten years nonuse in 1964 if the legislature had not enacted Act 278 of 1958. The Caddo Parish School Board did not provide a certain time period for the expiration of the servitude and had only an expectancy or hope that the law would not change. We find that retroactive application of Act 278 of 1958 under these circumstances does not affect vested rights and does not impair the obligations of contract. *United States v. Nebo*, supra; *Leiter Minerals*, supra.

We do not find, as the school board contends, that *United States v. Little Lake Misere Land Company, Inc.*, 412 U.S. 580, 93 S.Ct. 2389, 37 L.Ed.2d 187 (1973), had the effect of overriding the decisions in *Whitney*, *Nebo* and *Leiter*. Although these cases were discussed in *Little Lake Misere*, the basis for the Supreme Court's opinion was that federal law should be applied over Louisiana law because the Lake Misere land was acquired by the United States under the express authority of the Migratory Bird Conservation Act, a special law of Congress. No law of Congress is here involved.

We find that the servitude created in the 1954 deed was not one for a definite term set by the contract, but was instead a servitude of indefinite term that was subject to the law of liberative prescription of the State of Louisiana. Act 278 of 1958 applied to the 1954 servitude because the ten year period had not accrued in 1958. Accordingly, we reverse the judgment of the trial court and render judgment in favor of Mrs. Margaret Smith Bryan.

(1) Recognizing as yet valid the mineral servitude created on July 30, 1954, in the sale of land described as the East half of the Southeast quarter of Section 9, Township 16 North, Range

15 West, Caddo Parish, Louisiana, containing 80 acrs, more or less, by Mrs. Margaret Smith Bryan to the Caddo Parish School Board;

(2) Declaring Margaret Smith Bryan to be entitled to all sums attributable to the 25 percent royalty interest under the lease executed to Anadarko Production Company by Mrs. Margaret Smith Bryan on June 29, 1981; and

(3) Assessing all costs of these proceedings to the Caddo Parish School Board.

REVERSED AND RENDERED.

Court of Appeal
Second Circuit
State of Louisiana

Office of the Clerk, Shreveport, Louisiana. September 21, 1984.

As counsel of record in the captioned case, you are hereby notified that the application or applications for rehearing filed by defendant-appellee have this day been denied.

ANADARKO PRODUCTION COMPANY versus CADDO PARISH SCHOOL BOARD, ET AL.

Docket No. 16,332-C.A.

Comments (if any were given by the Court):

Sincerely,
Bob W. Schulman
Clerk of Court

cc: Mr. Joseph Hargrove, Jr.
Hargrove, Guyton, Ramey & Barlow
P.O. Box B
Shreveport, Louisiana 71161

Mr. Fred H. Sutherland
Beard & Sutherland
1103 Beck Building
Shreveport, Louisiana 71101

Mr. J. Jay Caraway
Blanchard, Walker, O'Quinn & Roberts
P.O. Drawer 1126
Shreveport, Louisiana 71163

ANADARKO PRODUCTION COMPANY : 84-C-1829

VERSUS

CADDO PARISH SCHOOL BOARD
AND MARGARET SMITH BRYAN

IN RE: CADDO PARISH SCHOOL BOARD et al, applying for WRIT OF CERTIORARI, WRIT OF REVIEW to the Court of Appeal, Second Circuit, No. 16,332-C.A.; Parish of Caddo, First Judicial District Court Division "C," No. 294,507.

November 16, 1984

Denied.

FAB
JAD
PFC
JLD
JCW

MARCUS & LEMMON, J.J., would grant the writ.

Supreme Court of Louisiana
November 16, 1984

Frans J. Labranche, Jr.
Clerk of Court
For the Court

ANADARKO PRODUCTION COMPANY : 84-C-1829

VERSUS

CADDO PARISH SCHOOL BOARD
AND MARGARET SMITH BRYAN

IN RE: CADDO PARISH SCHOOL BOARD applying for RECONSIDERATION of Denied Writ of November 16, 1984, from Second Circuit of Appeal, No. 16,332-C.A.; First Judicial District Court, Parish of Caddo, No. 294,507.

December 7, 1984

Denied. The judgment is final. CCP 2167 (D).

JAD
PFC
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
December 7, 1984

Frans J. Labranche, Jr.
Clerk of Court
For the Court

Supreme Court
STATE OF LOUISIANA
New Orleans

December 4, 1984

Honorable C.J. Bolin, Jr.
Judge, 1st Judicial District Court
Caddo Parish Courthouse Building
Shreveport, Louisiana 71101

Re: No. 84-C-1829
Anadarko Production Co. vs.
Caddo Parish School Board, et al
(1st JDC No. 294,507)

Dear Judge Bolin:

This is to advise that the Court took the following action, this date, in the above entitled matter:

"The execution of the judgment in this case is stayed pending the timely application to the United States Supreme Court and final action on that application."

With kindest regards, I remain,

Very truly yours,

Frans J. Labranche, Jr.
Clerk of Court

By: Dan B. Haggerty, Jr.
Deputy Clerk of Court

DBHJr/kf
ccs: Honorable Bob Schulman
Honorable W. Orie Hunter
Fred H. Sutherland, Esquire
J. Jay Caraway, Esquire
Joseph L. Hargrove, Jr., Esquire

FILED
February 4, 1985
HELEN H. SMITH
Deputy Clerk
Court of Appeal, Second Circuit

ENDORSED FILED
DEBBIE SHACKELFORD
Deputy Clerk
February 4, 1985
A TRUE COPY ATTEST

IN THE
Supreme Court of the State of Louisiana

ANADARKO PRODUCTION COMPANY	:	CIVIL ACTION
VERSUS	:	
CADDO PARISH SCHOOL BOARD AND MARGARET SMITH BRYAN	:	NO. 84-C-1829

IN THE
Second Circuit Court Of Appeal for the State of Louisiana

ANADARKO PRODUCTION COMPANY	:	CIVIL ACTION
VERSUS	:	
CADDO PARISH SCHOOL BOARD AND MARGARET SMITH BRYAN	:	NO. 16,332-C.A.

IN THE
First Judicial District Court Caddo Parish, Louisiana

ANADARKO PRODUCTION COMPANY	:	CIVIL ACTION
VERSUS	:	
CADDO PARISH SCHOOL BOARD AND MARGARET SMITH BRYAN	:	NO. 294,507

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Caddo Parish School Board, one of the defendants in the above-captioned matter, hereby appeals to the Supreme Court of the United States from the judgment of the Louisiana Court of Appeal for the Second Circuit, rendered in No. 16,332-C.A., reversing the judgment for the First Judicial Court of Caddo Parish, Louisiana, in Proceeding No. 294,507 on the docket of that Court, which judgment of the Court of Appeal became final upon the denial of Writs of Certiorari and Review by the Louisiana Supreme Court on November 16, 1984.

This appeal is taken pursuant to 28 U.S.C. §1257(2) and draws in question the constitutionality of Act 278 of the 1958 Louisiana Legislature as retrospectively applied.

BEARD & SUTHERLAND
Attorneys at Law
By: Fred H. Sutherland
1103 Beck Building
Shreveport, Louisiana 71101
Telephone (318) 226-9001

ATTORNEYS FOR APPELLANT
CADDO PARISH SCHOOL BOARD

CERTIFICATE AND PROOF OF SERVICE

I, FRED H. SUTHERLAND, attorney for the Caddo Parish School Board, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4th day of February, 1985, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

(1) On Anadarko Production Company, Plaintiff in this matter, by hand delivering a copy thereof to its attorney of record, Mr. Joseph L. Hargrove, Jr., Hargrove, Guyton, Ramey & Barlow, 7th Floor, First Federal Plaza, Shreveport, Louisiana 71101; and

(2) On Margaret Smith Bryan, one of the Defendants in this matter, by hand delivering a copy thereof to her attorneys of record, Mr. J. Jay Caraway and Mr. John T. Cox, Blanchard, Walker, O'Quinn & Roberts, 15th Floor, First National Bank Tower, Shreveport, Louisiana 71101;

In accordance with Rule 28.4(c) of the Supreme Court of the United Sates and 28 U.S.C. Section 2403(b), a copy of this notice was served on the Attorney General for the State of Louisiana on this date by mailing a copy thereof to him with first-class postage affixed, to State Capitol, P.O. Box 44005, Baton Rouge, Louisiana 70804.

Shreveport, Louisiana, on this 4th day of February, 1985.

FRED H. SUTHERLAND

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 4th day of February, 1985.

MARY G. KELLOGG, Notary Public

CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money, emit Bills of Credit; make any Thing but gold and silver Coin to Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

AMENDMENT XIV. SECTION 1. Citizenship rights not to be abridged by states.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LOUISIANA REVISED STATUTES

TITLE 31, SECTION 149: When land is acquired from any person by the United States or the State of Louisiana or any subdivision or agency of either by conventional deed or other contract or by condemnation or expropriation proceedings and by the act of acquisition, order or judgment, a mineral right otherwise subject to the prescription of nonuse is reserved, the prescription of nonuse shall not run against the right so long as title to the land remains in the government or any of its subdivisions or agencies. If, however, the land, or any part thereof, is transferred by the government or subdivision or agency to a private owner, the prescription of nonuse shall apply as in the usual case but shall commence only from the date on which the act of acquisition by the private owner is filed for registry.

ACT 278 (OF 1958)

Be it enacted by the Legislature of Louisiana:

Section 1. Section 5806 of Title 9 of the Louisiana Revised Statutes of 1950 is hereby amended and re-enacted to read as follows:

§5806. Oil, gas, mineral and royalty rights; land acquired by certain public bodies; imprescriptible; reversion of rights.

(1) When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies from any person, firm or corporation, and by the act of acquisition, order or judgment, oil, gas or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas or other minerals or royalties, still in force and effect, the rights so reserved or previously sold shall be imprescriptible.

(2) When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the State Department of Highways, the State Department of Public Works or by any of the several levee districts in the state, or by the State Department of Wildlife & Fisheries, or by a police jury, school district, schoolboard or other board, or by any commission, heretofore or hereafter created or established by the State of Louisiana, from any person, firm or corporation, and by the act of acquisition, order or judgment, oil, gas or other mineral or royalties are reserved, the rights so reserved shall be imprescriptible and shall remain vested in the person, firm or corporation from whom the land was acquired, condemned or expropriated, or in the heirs or assigns of that person, firm or corporation; provided, however, that should the ownership of such land pass into private hands, the prescription of nonuser provided by R.C.C. Arts. 789 and

3546 shall apply as in the usual case, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas or other minerals or royalties, still in force and effect, the rights so reserved or previously sold shall prescribe for nonuse by the owner thereof, but such rights shall revert to the owner of the land at the time of its acquisition, condemnation or expropriation by the state governmental agency, or to said owner's heirs or assigns, rather than to the owner of the expropriated land at the time of reversion; provided, however, that should the ownership of such land pass into private hands, the prescription of nonuser provided by R.C.C. Arts. 789 and 3546 shall apply as in the usual case.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed, provided, however, that if this act is declared unconstitutional, in whole or in part, the rights of all parties affected by any such decision shall be determined in accordance with the laws in force and effect prior to the time that this act takes effect. Approved by the Governor: July 8, 1958.

ACT NO. 528 (OF 1960)

Be it enacted by the Legislature of Louisiana:

Section 1. Sub-section B of Section 5806 of Title 9 of the Louisiana Revised Statutes of 1950 is hereby amended and re-enacted to read as follows:

B. When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the State Department of Highways, the State Department of Public Works or by any of the several levee districts in the state, or by the State Department of Wildlife & Fisheries, or by a police jury, school district, school board or other board, or by any commission, or any political subdivision authorized to incur debt and issue bonds under the provisons of the Constitution and statutes of the State of Louisiana, heretofore or hereafter created or established by the State of Louisiana, from any person, firm or corporation, and by the act of acquisition, order or judgment, oil, gas or other mineral or royalties are reserved, the right so reserved shall be imprescriptible and shall remain vested in the person, firm or corporation from whom the land was acquired, condemned or expropriated, or in the heirs or assigns of that person, firm or corporation; provided, however, that should the ownership of such land pass into private hands, the prescription of nonuser provided by R.C.C. Arts. 789 and 3546 shall apply as in the usual case, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas or other minerals or royalties, still in force and effect, the rights so reserved or previously sold shall prescribe for non-use by the owner thereof, but such rights shall revert to the owner of the land at the time of its acquisition, condemnation or expropriation by the state governmental agency, or to said owner's heirs or assigns, rather than to the owner of the expropriated land at the time of reversion; provided, however, that should the ownership of such land pass into private hands, the prescription

of nonuser provided by R.C.C. Arts. 789 and 3546 shall apply as in the usual case.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed, provided, however that if this act is declared unconstitutional, in whole or in part, the rights of all parties affected by any such decision shall be determined in accordance with the laws in force and effect prior to the time that this act takes effect. Approved by the Governor: July 9, 1960.